

- (d) trade vendor and related, miscellaneous obligations.

The Debtors have not conducted a full analysis of the payments described above to determine the propriety of such payments or their susceptibility to avoidance as preferences. A complete analysis would include a review of the amount of payment, the nature of goods or services or other obligations that gave rise to the payment in each of the above-described categories of payments and the availability of the various statutory defenses to preference liability to the recipients of such payments. In the Debtors' opinion, while the aggregate amount of such payments is not insignificant, most of such payments were appropriately paid in the ordinary course of operations, and the recapture of any individual amount would not materially change the proposed recovery to the Debtors' creditors pursuant to the Plan.

#### **B. Certain Effective Date Bonuses**

As noted above, the Debtors compensate many of their professionals and the professionals of the Committee on an hourly or monthly basis. The compensation package approved by the Bankruptcy Court for Blackstone, the Debtors' financial advisors, also provides for a significant lump-sum payment to be made to Blackstone on the Effective Date. This Effective Date payment ranges from 0.3% to 0.7% of the Debtors' reorganization value, with the percentage payment increasing as reorganization value increases. The compensation package approved by the Bankruptcy Court for Houlihan Lokey Howard & Zukin ("Houlihan"), financial advisors to the Committee, provides that on the date that distributions are received by unsecured creditors, Houlihan may receive a lump-sum deferred compensation payment. This deferred payment will only be paid if the distribution to unsecured creditors exceeds approximately \$84 million, and is based on the amount by which the distribution to unsecured creditors under the Plan exceeds a number that is approximately \$84 million. In addition, Chilmark Partners, the financial advisors to the steering committee of the Pre-Petition Lenders, is entitled to a payment of \$500,000 on the Effective Date.

Moreover, on June 4, 1997, the Bankruptcy Court approved the establishment of an Effective Date Incentive Program. This program is intended to create incentives for and to reward various members of the Debtors' management for the unique and extraordinary demands placed on them and the contributions they have made to the resolution of the Debtors' restructuring and bankruptcy efforts. The Debtors believe that under the circumstances, the payments to be made under the Effective Date Incentive Program are fair and reasonable. At reorganization values up to \$1 billion, the Board of Directors has authority to pay up to \$2.8 million to the Debtors' management, to be distributed in accordance with the Effective Date Incentive Program. In addition, at reorganization values up to \$1 billion, Ronald Grawert, the Debtors' Chief Executive Officer, will be entitled to a payment under the Effective Date Incentive Program of \$1.5 million. Finally, at reorganization values up to \$1 billion, Alvarez & Marsal, Inc. will be entitled, subject to final approval by the Bankruptcy Court, to an Effective Date Incentive Program payment equal to .2% of reorganization value.

## **XI. RECOMMENDATION**

The Debtors believe that confirmation of the Plan is preferable to the available alternatives because it provides a greater and more timely distribution to Creditors than would otherwise result. In addition, any alternative to confirmation of the Plan could result in extensive delays and increased administrative expenses resulting in potentially smaller distributions to the holders of Claims in the Cases. The Committee supports the Plan and will recommend to all Unsecured Creditors that they vote to accept the Plan.

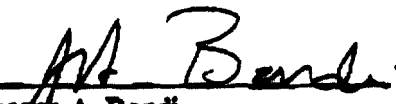
## **XII. CONCLUSION**

The Debtors urge all holders of Claims that are or may be impaired under the Plan to vote to accept the Plan and to evidence such acceptance by returning their Ballots so that they will be timely received.

Respectfully submitted this 25th day of August, 1998.

MOBILEMEDIA COMMUNICATIONS, INC.  
MOBILEMEDIA CORPORATION  
MOBILEMEDIA COMMUNICATIONS, INC. (CALIFORNIA)  
MOBILEMEDIA DP PROPERTIES, INC.  
MOBILEMEDIA PCS, INC.  
DIAL PAGE SOUTHEAST, INC.  
RADIO CALL COMPANY OF VA. INC.  
MOBILEMEDIA PAGING, INC.  
MOBILE COMMUNICATIONS CORPORATION OF AMERICA  
MOBILECOMM OF THE SOUTHEAST, INC.  
MOBILECOMM OF THE NORTHEAST, INC.  
MOBILECOMM NATIONWIDE OPERATIONS, INC.  
MOBILECOMM OF TENNESSEE, INC.  
MOBILECOMM OF THE SOUTHEAST PRIVATE CARRIER  
OPERATIONS, INC.  
MOBILECOMM OF THE SOUTHWEST, INC.  
MOBILECOMM OF FLORIDA, INC.  
MOBILECOMM OF THE MIDSOUTH, INC.  
FWS RADIO, INC.  
MOBILECOMM OF THE WEST, INC.

Debtors and Debtors-in-Possession

By:   
Joseph A. Bondi  
Chairman-Restructuring of  
MobileMedia Corporation

**YOUNG CONAWAY STARGATT  
& TAYLOR, LLP**

James L. Patton, Jr. (No. 2202)

Joel A. Waite (No. 2925)

11th Floor - Rodney Square North

P.O. Box 391

Wilmington, Delaware 19899

(302) 571-6600

**SIDLEY & AUSTIN**

J. Ronald Trost

James D. Johnson

Shelley C. Chapman

Lee M. Stein

875 Third Avenue

New York, New York 10022

(212) 906-2000

**Attorneys for Debtors and  
Debtors-in-Possession**

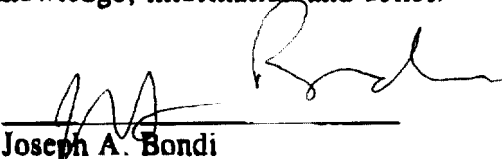


**DECLARATION**

I, Joseph A. Bondi, hereby declare as follows:

1. I am Chairman-Restructuring of MobileMedia Corporation ("MobileMedia").
2. The records available to MobileMedia for the purpose of tracking ownership of MobileMedia stock demonstrate the following with respect to the stockholdings of Mr. Gene Belardi, Mr. Kenneth McVay, Mr. John Kealey and Mr. Gregory Rorke:
  - (a) Mr. Belardi was granted options for 75,000 shares which were never exercised and expired with his termination from the company on September 27, 1996;
  - (b) Mr. McVay was granted options for 87,890 shares which were never exercised and expired with his termination from the company on September 27, 1996;
  - (c) Mr. Rorke has outstanding options for 140,000 shares; and,
  - (d) Mr. Kealey held 3,264 shares of MobileMedia stock on June 6, 1997 and, to date, continues to hold those shares. Additionally, Mr. Kealey has outstanding options not exceeding options for 166, 281 shares. To the best of my knowledge.
3. MobileMedia has no record of any sale of stock owned by an officer or director of MobileMedia during the pendency of the stay imposed by the Federal Communication's Commission on June 6, 1997.

I certify, under penalty of perjury under the laws of the United States of America, that the foregoing is true and correct to the best of my knowledge, information and belief.

  
\_\_\_\_\_  
Joseph A. Bondi  
Chairman-Restructuring  
MobileMedia Corporation

September 1, 1998

**DECLARATION**

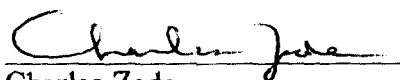
I, Charles Zade, under penalty of perjury, hereby declare as follows:

1. I am a Vice-President of Harris Trust and Savings Bank ("Harris"), Chicago, Illinois.
2. Harris is the transfer agent for the common stock of MobileMedia Corporation ("MobileMedia").
3. I have reviewed all records available to Harris for the purpose of tracking ownership of MobileMedia stock in order to determine whether any of the following individuals held shares of MobileMedia stock on or after June 6, 1997 or currently hold such shares:

Mr. Gene Belardi  
Mr. Kenneth McVay  
Mr. John Kealey  
Mr. Gregory Rorke

4. The records of stock ownership show that only Mr. Kealey owned shares of MobileMedia stock on or before June 6, 1997.
5. Mr. Kealey owned 3,264 shares of MobileMedia common stock on June 6, 1997 and continues to own this amount.

I certify, under penalty of perjury under the laws of the United States of America, that the foregoing is true and correct to the best of my knowledge, information and belief.

  
Charles Zade  
Vice-President  
Harris Trust and Savings Bank

August 27, 1998

## DECLARATION

I, Paul H. Kuzia, hereby declare as follows:

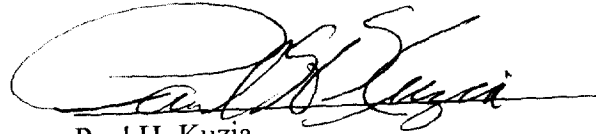
1. I am Executive Vice President, Technology and Regulatory Affairs of Arch Communications Group, Inc. ("Arch").

2. I have personal knowledge that none of the following individuals is employed by Arch or any of its subsidiaries:

Mr. Gene Belardi  
Mr. Kenneth McVay  
Mr. John Kealey  
Mr. Gregory Rorke

4. None of the listed individuals will be employed by Arch or any of its subsidiaries or otherwise have any role in the operation or management of Arch in the future.

I certify, under penalty of perjury under the laws of the United States of America, that the foregoing is true and correct to the best of my knowledge, information and belief.



Paul H. Kuzia  
Executive Vice President, Technology  
and Regulatory Affairs  
Arch Communications Group, Inc.

August 26, 1998



*State of Delaware*  
*Office of the Secretary of State* PAGE 1

---

I, EDWARD J. FREEL, SECRETARY OF STATE OF THE STATE OF DELAWARE, DO HEREBY CERTIFY THE ATTACHED IS A TRUE AND CORRECT COPY OF THE CERTIFICATE OF MERGER, WHICH MERGES:

"ARCH COMMUNICATIONS GROUP, INC., A DELAWARE CORPORATION,  
WITH AND INTO "USA MOBILE COMMUNICATIONS HOLDINGS, INC."  
UNDER THE NAME OF "ARCH COMMUNICATIONS GROUP, INC." A  
CORPORATION ORGANIZED AND EXISTING UNDER THE LAWS OF THE STATE  
OF DELAWARE, AS RECEIVED AND FILED IN THIS OFFICE THE SEVENTH  
DAY OF SEPTEMBER, A.D. 1995, AT 4:15 O'CLOCK P.M.



  
Edward J. Freel, Secretary of State

2283439 8100M

981090547

AUTHENTICATION: 8962011

DATE: 03-10-98

CERTIFICATE OF MERGER  
OF  
USA MOBILE COMMUNICATIONS HOLDINGS, INC.  
AND  
ARCH COMMUNICATIONS GROUP, INC.

---

Pursuant to Section 251 of the  
General Corporation Law of the State of Delaware

---

USA Mobile Communications Holdings, Inc., a Delaware corporation, does hereby certify the following facts relating to the merger of Arch Communications Group, Inc., a Delaware corporation, with and into USA Mobile Communications Holdings, Inc. (the "Merger"):

FIRST: The names and states of incorporation of the constituent corporations are as follows:

<u>Name of Corporation</u>	<u>State of Incorporation</u>
USA Mobile Communications Holdings, Inc.	Delaware
Arch Communications Group, Inc.	Delaware

SECOND: An Agreement and Plan of Merger (the "Merger Agreement") has been approved, adopted, certified, executed and acknowledged by each of the constituent corporations in accordance with the provisions of Section 251(c) of the General Corporation Law of Delaware.

THIRD: The name of the corporation surviving the Merger is USA Mobile Communications Holdings, Inc. (the "Surviving Corporation"), except that, at the effective time of the Merger, the name of the Surviving Corporation will be changed to Arch Communications Group, Inc.

FOURTH: The Merger shall be effective at 5:01 p.m. Eastern Time on September 7, 1995.

FIFTH: The Restated Certificate of Incorporation of USA Mobile Communications Holdings, Inc. shall be amended to read in its entirety as set forth in Exhibit A attached hereto and, as subsequently amended, shall be the Restated Certificate of Incorporation of the Surviving Corporation.

SIXTH: The executed Merger Agreement is on file at the principal place of business of the Surviving Corporation, 1800 West Park Drive, Suite 250, Westborough, Massachusetts, 01581. A copy of the Merger Agreement will be furnished by the Surviving Corporation, on request and without cost, to any stockholder of either constituent corporation.

IN WITNESS WHEREOF, USA Mobile Communications Holdings, Inc. has caused this Certificate of Merger to be duly executed in its corporate name this 7 day of September, 1995.

USA MOBILE COMMUNICATIONS  
HOLDINGS, INC.

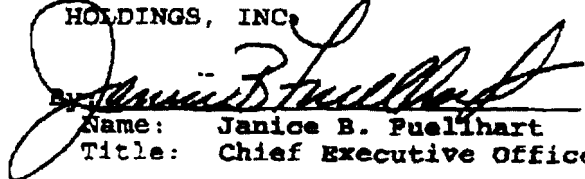
  
Name: Janice B. Puellhart  
Title: Chief Executive Officer

EXHIBIT A

RESTATED  
CERTIFICATE OF INCORPORATION  
OF  
ARCH COMMUNICATIONS GROUP, INC.

FIRST: The name of the Corporation is Arch Communications Group, Inc.

SECOND: The address of the Corporation's registered office in the State of Delaware is 32 Locustman Square, Suite 11-100, in the City of Dover, County of Kent. The name of its registered agent at such address is The Prudice-Hall Corporation System, Inc.

THIRD: The purpose of the Corporation is to engage in any lawful act or activity for which corporations may be organized under the GCL.

FOURTH: (a) The aggregate number of shares of all classes of stock which the Corporation shall have authority to issue is \$5,000,000 shares, consisting of (i) 75,000,000 shares of Common Stock, \$.01 per value per share ("Common Stock"), and (ii) 10,000,000 shares of preferred stock, \$.01 per value per share ("Preferred Stock"), of which 31,874 shares have been designated as Series A Preferred Stock, \$.01 per value per share ("Series A Preferred Stock"), and 9,968,126 shares remain available for future designation and issuance in accordance with the GCL.

(b) The powers, preferences and rights of the shares of Common Stock and Preferred Stock, and the qualifications, limitations and restrictions thereof, are as follows:

(i) *Common Stock*

Subject to the provisions of any series of Preferred Stock which may at the time be outstanding, the holders of Common Stock shall be entitled to receive, when and as declared from time to time by the Board of Directors out of any funds legally available for the purpose, such dividends as may be declared from time to time by the Board of Directors. When and as dividends are declared thereon, whether payable in cash, property or securities of the Corporation, each holder of Common Stock will be entitled to participate in such dividends ratably on a per share basis. In the event of any liquidation, dissolution or winding up of the Corporation, whether voluntary or involuntary, or upon the distribution of its assets, after the payment in full or the setting apart for payment of such preferential amounts, if any, to which the holders of Preferred Stock at the time outstanding shall be entitled, the remaining assets of the Corporation available for payment and distribution to stockholders shall, subject to any participating or similar rights of any series of Preferred Stock at the time outstanding, be distributed ratably among the holders of Common Stock at the time outstanding. Shares of Common Stock shall have no preference, conversion, exchange, preemptive or other similar rights. Except as otherwise required by the GCL, on all matters to be voted on by the Corporation's stockholders, the Common Stock will be entitled to one vote per share.

(ii) *Series A Preferred Stock*

The Series A Preferred Stock shall have the following powers, preferences, rights and limitations:

(A) *Designation and Amount of Series A Preferred Stock.* 31,874 shares of the authorized and unissued Preferred Stock of the Corporation have been designated as the Series A Preferred Stock.

(B) *Dividends.* Except as specifically provided herein, the holders of the Series A Preferred Stock shall not be entitled to receive any distributions, whether in cash, property or securities of the Corporation, and whether by dividend, liquidating distribution or otherwise.

(C) *Term.* The Series A Preferred Stock shall not expire without further action by the Corporation.

(D) *Liquidation Preference.* Upon any liquidation, dissolution or winding up of the Corporation, whether voluntary or involuntary, the holders of the Series A Preferred Stock shall be entitled, before any distribution or payment is made upon any Common Stock, to be paid an amount equal to \$70 per share of such stock, and no more, before any amount shall be paid to the holders of any Common Stock of the Corporation. In the event that the assets of the Corporation are insufficient to permit full payment to the holders of the Series A Preferred Stock as herein provided, then the assets shall be distributed pro rata to the holders of the Series A Preferred Stock. A consolidation or merger of the Corporation with or into any other corporation, or the sale of all or substantially all of the assets of the Corporation, shall not be deemed a liquidation, dissolution or winding up of the Corporation within the meaning of this paragraph (D).

(E) *Redemption.* The Corporation shall have the right, at its option, to redeem all or any portion of the outstanding Series A Preferred Stock, pro rata among the holders of the then outstanding Series A Preferred Stock, at the Redemption Price. "Redemption Price" shall mean, at any date, an amount equal to sum of (1) \$70 for each share of the Series A Preferred Stock to be redeemed on such date plus (2) an amount equal to the accretion in value of \$70 from the date of issuance of the preferred stock, per value \$70, of Premiere Page, Inc. ("Premiere Page Preferred Stock") converted into such Series A Preferred Stock to the date of such redemption, calculated at the rate of (x) 15.25% per annum for periods from the date of issuance of such Premiere Page Preferred Stock to January 30, 1995 and (y) 10% per annum for periods from January 31, 1995 to January 30, 1997. If, for any reason, any outstanding Series A Preferred Stock shall not have been redeemed by January 30, 1997, the additional accretion in value of such Series A Preferred Stock for periods from January 31, 1997 through the date of redemption shall be calculated at the rate of 15.25% per annum.

(F) *Voting Rights.* Except as otherwise provided by law, the holders of Series A Preferred Stock shall have one vote per share on all matters, voting together with the holders of the Common Stock.

(G) *Restrictions on Transfer.* No holder of Series A Preferred Stock shall sell, assign, transfer, pledge, hypothecate or otherwise convey in any manner whatsoever any Series A Preferred Stock except to another holder of Series A Preferred Stock (and provided such proposed transferee is an individual) without the prior written consent of the Corporation, unless all such Series A Preferred Stock is first offered for sale to the Corporation, upon the following terms and conditions:

(1) The selling stockholder shall offer to the Corporation by written notice (the "Sale Notice") the Series A Preferred Stock, which Sale Notice shall state the name and address of the proposed purchaser (the "Proposed Transferee"), the number of shares of Series A Preferred Stock proposed to be sold (the "Offered Shares"), the proposed purchase price (the "Proposed Price") and the terms and conditions of the proposed sale. For a period of 30 days after receipt by the Corporation of the Sale Notice, the Corporation shall have the option to purchase all or a portion of the Offered Shares for the Proposed Price and on the same terms and conditions as are specified in the Sale Notice by delivering written notice to such selling stockholder (the "Purchase Notice").

(2) In the event that the Corporation does not elect to purchase all of the Offered Shares (the "Available Shares"), the selling stockholder may sell the Available Shares to the Proposed Transferee for a period of 45 days after the delivery of the Purchase Notice at a price no less than the Proposed Price and on terms and conditions no more favorable than those specified in the Sale Notice; provided, however, that the Proposed Transferee must agree to be bound by all the terms and covenants contained herein pertaining to the Series A Preferred Stock.

(H) *Status of Acquired Shares.* Shares of Series A Preferred Stock redeemed by the Corporation or otherwise acquired by the Corporation will be restored to the status of authorized but unissued shares of Preferred Stock, without designation as to class, and may thereafter be issued, but not as shares of Series A Preferred Stock.

(I) *Severability of Provisions.* Whenever possible, each provision contained in this paragraph (v) of this Article FOURTH shall be interpreted in a manner as to be effective and valid under

applicable law, but if any provision hereof is held to be prohibited by or invalid under applicable law, such provision shall be ineffective only to the extent of such prohibition or invalidity, without invalidating or otherwise adversely affecting the remaining provisions hereof. If a court of competent jurisdiction should determine that a provision hereof would be valid or enforceable if a period of time were extended or shortened or a particular percentage were increased or decreased, then such court may make such change as shall be necessary to render the provision in question effective and valid under applicable law.

(iii) *Preferred Stock.*

Preferred Stock may be issued from time to time in one or more series, each of such series to have such terms as stated or expressed herein and in the resolution or resolutions providing for the issue of such series adopted by the Board of Directors of the Corporation as hereinafter provided. Any shares of Preferred Stock which may be redeemed, purchased or acquired by the Corporation may be retained except as otherwise provided by law. Different series of Preferred Stock shall not be construed to constitute different classes of shares for the purpose of voting classes unless expressly provided.

The voting, dividend and liquidation rights of the holders of the Common Stock are subject to and qualified by the rights of the holders of the Preferred Stock of any series as may be designated by the Board of Directors upon any issuance of the Preferred Stock of any series.

Authority is hereby expressly granted to the Board of Directors from time to time to issue the Preferred Stock in one or more series, and in connection with the creation of any such series, by resolution or resolutions providing for the issue of the shares thereof, to determine and fix such voting powers, full or limited, or no voting powers, and such designations, preferences and relative participating, optional or other special rights, and qualifications, limitations or restrictions thereof, including without limitation thereof, dividend rights, conversion rights, redemption privileges and liquidation preferences, as shall be stated and expressed in such resolutions, all to the full extent now or hereafter permitted by the GCL. Without limiting the generality of the foregoing, the resolutions providing for issuance of any series of Preferred Stock may provide that such series shall be superior or rank equally or be junior to the Preferred Stock of any other series to the extent permitted by law. Except as otherwise provided in this Restated Certificate of Incorporation, no vote of the holders of the Preferred Stock or Common Stock shall be a prerequisite to the designation or issuance of any shares of any series of the Preferred Stock authorized by and complying with the conditions of this Restated Certificate of Incorporation, the right to have such vote being expressly waived by all present and future holders of the capital stock of the Corporation.

FIFTH: In furtherance of, and not in limitation of, the powers conferred by statute, the Board of Directors is expressly authorized and empowered:

(a) to adopt, amend or repeal the By-Laws of the Corporation; *provided, however,* that the By-Laws adopted by the Board of Directors under the powers hereby conferred may be amended or repealed by the Board of Directors or by the stockholders having voting power with respect thereto, except that all of Article II, all of Article III, Sections 2 and 3 of Article IV, and Article XIII of the By-Laws shall not be amended or repealed, nor shall any provision inconsistent with such By-Laws be adopted, without the affirmative vote of the holders of at least eighty percent (80%) of the Voting Stock (as hereinafter defined) of the Corporation, voting together as a single class. Notwithstanding anything contained in this Restated Certificate of Incorporation to the contrary, the affirmative vote of the holders of at least eighty percent (80%) of the Voting Stock of the Corporation, voting together as a single class, shall be required to amend, repeal or adopt any provision inconsistent with this Section (a) of Article FIFTH; and

(b) from time to time to determine whether and to what extent, and at what times and places, and under what conditions and regulations, the accounts and books of the Corporation, or any of them, shall be open to inspection of stockholders; and no stockholder shall have any right to inspect any account, book or document of the Corporation except as conferred by applicable law.

The Corporation may in its By-Laws confer powers upon the Board of Directors in addition to the foregoing and in addition to the powers and authorities expressly conferred upon the Board of Directors by applicable law. For the purposes of this Restated Certificate of Incorporation, "Voting Stock" shall mean the outstanding shares of capital stock of the Corporation entitled to vote generally in the election of directors.

SIXTH: Subject to the provisions of any series of Preferred Stock which may at the time be outstanding:

(a) any action required or permitted to be taken by the stockholders of the Corporation must be effected at a duly called annual or special meeting of stockholders of the Corporation and may not be effected by any consent in writing of such stockholder;

(b) special meetings of the stockholders of the Corporation may be called by (i) the Chairman of the Board of Directors, (ii) pursuant to a resolution approved by a majority of the Whole Board (as hereinafter defined) or (iii) pursuant to a written request of the holders of twenty percent (20%) of the Voting Stock; and

(c) the business permitted to be conducted at any special meeting of the stockholders is limited to the business brought before the meeting by the Chairman, or at the request of a majority of the Board of Directors, or as specified in the written request of the holders of twenty percent (20%) of the Voting Stock.

Notwithstanding anything contained in this Restated Certificate of Incorporation to the contrary, the affirmative vote of at least eighty percent (80%) of the Voting Stock, voting together as a single class, shall be required to amend, repeal, or adopt any provision inconsistent with this Article SIXTH. For the purposes of this Restated Certificate of Incorporation, "Whole Board" shall mean the total number of directors which the Corporation would have if there were no vacancies.

SEVENTH: This Article SEVENTH is inserted for the management of the business and for the conduct of the affairs of the Corporation.

(a) *Number, Election and Terms of Directors.* Subject to the provisions of any series of Preferred Stock which may at the time be outstanding, the number of directors of the Corporation shall be fixed by the By-Laws of the Corporation and may be increased or decreased from time to time in such a manner as may be prescribed by the By-Laws, but in no case shall the number be less than three nor more than fifteen.

The directors shall be divided into three classes, as nearly equal in number as possible. The members of each class shall hold office until their successors are elected and qualified. At each annual meeting of the stockholders of the Corporation, the successors of the class of directors whose term expires at that meeting shall be elected by plurality vote of all votes cast at such meeting to hold office for a term expiring at the annual meeting of stockholders held in the third year following the year of their election.

(b) *Stockholder Nomination of Director Candidates.* Advance notice of stockholder nominations for the election of directors and advance notice of business to be brought by stockholders before an annual meeting shall be given in the manner provided in the By-Laws of the Corporation.

(c) *Newly Created Directorships and Vacancies.* Subject to the provisions of any series of Preferred Stock which may at the time be outstanding, newly created directorships resulting from any increase in the number of directors and any vacancy on the Board of Directors resulting from death, resignation, disqualification, removal or other cause shall be filled solely by the affirmative vote of a majority of the remaining directors then in office, even though less than a quorum of the Board of Directors, or by a sole remaining director. Any director elected in accordance with the preceding sentence shall hold office for the remainder of the full term of the class of directors in which the new directorship was created or the vacancy occurred and until such director's successor shall have been elected and qualified. No decrease in the number of directors constituting the Board of Directors shall shorten the term of an incumbent director.

(d) *Removal of Directors.* Subject to the provisions of any series of Preferred Stock which may at the time be outstanding, any director may be removed from office only by the stockholders in the manner provided in this paragraph (d) of Article SEVENTH. At any annual or special meeting of the stockholders of the



Corporation, the notice of which shall state that the removal of a director or directors is among the purposes of the meeting, the affirmative vote of the holders of at least eighty percent (80%) of the Voting Stock, voting together as a single class, may remove such director or directors. In any vote required by or provided for in this Article SEVENTH, each share of Voting Stock shall have the number of votes granted to it generally in the election of directors.

(e) *Amendment.* Notwithstanding anything contained in this Restated Certificate of Incorporation to the contrary, the affirmative vote of the holders of at least eighty percent (80%) of the Voting Stock, voting together as a single class, shall be required to amend, repeal or adopt any provision inconsistent with this Article SEVENTH.

**EIGHTH:** A director of the Corporation shall not be personally liable to the Corporation or its stockholders for monetary damages for breach of fiduciary duty as a director for any act or omission; *provided, however,* that the foregoing shall not eliminate or limit the liability of a director (a) for any breach of the director's duty of loyalty to the Corporation or its stockholders, (b) for acts or omissions not in good faith or which involve intentional misconduct for a knowing violation of law, (c) under Section 174 of the GCL, or (d) for any transaction from which the director derived an improper personal benefit. If the GCL is hereafter amended to permit further elimination or limitation of the personal liability of directors, then the liability of a director of the Corporation shall be eliminated or limited to the fullest extent permitted by the GCL as so amended. Any repeal or modification of this Article EIGHTH by the stockholders of the Corporation or otherwise shall not apply to or have any effect on the liability or alleged liability of any director of the Corporation for or with respect to any acts or omissions of such director occurring prior to such amendment or repeal.

**NINTH:** (a) The Corporation shall, to the fullest extent permitted by Section 145 of the GCL, indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative (other than an action by or in the right of the Corporation) against any and all of the expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually or reasonably incurred by such person by reason of having been an officer, director, employee or agent of the Corporation or is or was serving at the request of the Corporation as a director, officer, employee or agent of any other corporation, partnership, joint venture, trust or other enterprise if such person acted in good faith and in a manner he reasonably believed to be in or not opposed to the best interests of the Corporation, and, with respect to any criminal action or proceedings, had no reasonable cause to believe that his conduct was unlawful. The termination of any action, suit or proceeding by judgment, order, settlement, conviction or upon a plea of nolo contendere or its equivalent shall not, of itself, create a presumption that the person did not act in good faith and in a manner which he reasonably believed to be in or not opposed to the best interests of the Corporation, and, with respect to any criminal action or proceedings, had reasonable cause to believe that his conduct was unlawful.

(b) The Corporation may indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action or suit by or in the right of the Corporation to procure a judgment in its favor by reason of the fact that he is or was a director, officer, employee or agent of the Corporation or is or was serving at the request of the Corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise against expenses (including attorneys' fees) actually and reasonably incurred by him in connection with the defense or settlement of such action or suit if such person acted in good faith and in a manner such person reasonably believed to be in or not opposed to the best interests of the Corporation and except that no indemnification shall be made respect of any claim, issue or matter as to which such person shall have been adjudged to be liable to the Corporation unless and only to the extent that the Court of Chancery or the court in which such action or suit was brought shall determine upon application that, despite the adjudication of liability but in view of all the circumstances of the case, such person is fairly and reasonably entitled to indemnity for such expenses which the Court of Chancery or such other court shall deem proper.

(c) To the extent that a director, officer, employee or agent of the Corporation has been successful on the merits or otherwise in defense of any action, suit or proceeding referred to in subsections (a) and (b) of

this Article NINTH, or in defense of any claim, issue or matter therein, he shall be indemnified against expenses (including attorneys' fees) actually and reasonably incurred by him in connection therewith.

(d) Any indemnification under subsections (a) and (b) of this Article NINTH (unless ordered by a court) shall be made by the Corporation only as authorized in the specific case upon a determination that indemnification of the director, officer, employee or agent is proper in the circumstances because he has met the applicable standard of conduct set forth in subsections (a) and (b) of this Article NINTH. Such determination shall be made (i) by the Board of Directors of a majority vote of a quorum consisting of directors who were not parties to such action, suit or proceeding, or (ii) if such a quorum is not obtainable or, even if obtainable, a quorum of disinterested directors so directs, by independent legal counsel in a written opinion, or (iii) by the stockholders.

(e) Expenses (including attorneys' fees) incurred by an officer or director in defending any civil, criminal, administrative or investigative action, suit or proceeding may be paid by the Corporation in advance of the final disposition of such action, suit or proceeding upon receipt of an undertaking by or on behalf of such director or officer to repay such amount if it shall ultimately be determined that such person is not entitled to be indemnified by the Corporation as authorized in this Article NINTH. Such expenses (including attorneys' fees) incurred by other employees and agents may be so paid upon such terms and conditions, if any, as the Board of Directors deems appropriate.

(f) The indemnification and advancement of expenses provided by, or granted pursuant to, the other subsections of this Article NINTH shall not be deemed exclusive of any other rights to which those seeking indemnification or advancement of expenses may be entitled under any by-law, agreement, vote of stockholders or disinterested directors or otherwise, both as to action in such person's official capacity and as to action in another capacity while holding such office.

(g) The Corporation shall have the power to purchase and maintain insurance on behalf of any person who is or was a director, officer, employee or agent of the Corporation, or is or was serving at the request of the Corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise, against any liability asserted against and incurred by such person in any such capacity or arising out of such person's status as such whether or not the Corporation would have the power to indemnify a person against such liability under this Article NINTH.

(h) The indemnification and advancement of expenses provided by, or granted pursuant to, this Article NINTH shall, unless otherwise provided when authorized or ratified, continue as to a person who has ceased to be a director, officer, employee or agent and shall inure to the benefit of the heirs, executor and administrators of such a person.

(i) If a claim for indemnification pursuant to this Article NINTH is not paid in full by the Corporation within 30 days after a written claim has been received by the Corporation, the claimant may at any time thereafter bring suit against the Corporation to recover the unpaid amount of the claim and, if successful in whole or in part, the claimant shall also be entitled to be paid the expenses of prosecuting such claim. It shall be a defense to any such action (other than an action brought to enforce a claim for expenses incurred in defending any proceeding in advance of its final disposition where the required undertaking, if any is required, has been rendered to the Corporation) that the claimant has not met the applicable standard of conduct set forth in the GCL for the Corporation to indemnify the claimant for the amount claimed, but the burden of proving such defense shall be on the Corporation. Neither the failure of the Corporation (including its Board of Directors, independent legal counsel or stockholders) to have made a determination prior to the commencement of such action that indemnification of the claimant is proper in the circumstances because he or she has met the applicable standard of conduct set forth in the GCL, nor an actual determination by the Corporation (including its Board of Directors, independent legal counsel or stockholders) that the claimant has not met such applicable standard of conduct, shall be a defense to the action or create a presumption that the claimant has not met such applicable standard of conduct.

TENTH: The Board of Directors of the Corporation, in determining whether the interests of the Corporation, its subsidiaries and its stockholders will be served by any offer of another person to (a) make a tender or exchange offer for any equity security of the Corporation or any subsidiary of the Corporation, (b) merge or consolidate the Corporation or any of its subsidiaries with or into another corporation, or (c)

purchase or otherwise acquire all or substantially all of the properties and assets of the Corporation or any of its subsidiaries, may take into account factors in addition to potential economic benefits to stockholders. Such factors may include (x) comparison of the proposed consideration to be received by stockholders in relation to the then current market price of the capital stock, the estimated current value of the Corporation in a freely negotiated transaction, and the estimated future value of the Corporation as an independent entity; (y) the impact of such a transaction on the customers and employees of the Corporation, and its effect on the communities in which the Corporation operates; and (z) the ability of the Corporation to fulfill its objectives under applicable statutes and regulations.

The term "offer" as used in this Article TENTH includes every offer to buy or acquire, solicitation of an offer to sell, tender offer for, or request or invitation for tender of, a security or interest in a security for value.

**ELEVENTH:** The Corporation may not purchase any shares of its stock from any person, entity or group that beneficially owns five percent (5%) or more of the Voting Stock at a price exceeding the average closing price for the 20 trading days prior to the purchase date, unless a majority of the Corporation's Disinterested Stockholders (as hereinafter defined) approve the transaction. The restrictions on purchases by the Corporation of this Article ELEVENTH do not apply (a) to any offer to purchase shares of a class of the Corporation's stock which is made on the same terms and conditions to all holders of that class of stock, (b) to any purchase of stock owned by such a 5% stockholder occurring more than two years after such stockholder's last acquisition of the Corporation's stock, (c) to any purchase of the Corporation's stock in accordance with the terms of any stock option or employee benefit plan, or (d) to any purchase at prevailing market prices pursuant to a stock purchase program.

For purposes of this Article ELEVENTH, the term "Disinterested Stockholders" means holders of less than five percent (5%) of the Voting Stock.

**TWELFTH:** Whenever a compromise or arrangement is proposed between this Corporation and its creditors or any class of them and/or between this Corporation and its stockholders or any class of them, any court of equitable jurisdiction within the State of Delaware may, on the application in a summary way of this Corporation or of any creditor or stockholder thereof, or on the application of any receiver or receivers appointed for this Corporation under the provisions of Section 291 of Title 8 of the GCL or on the application of trustees in dissolution or of any receiver or receivers appointed by this Corporation under the provisions of Section 279 of Title 8 of the GCL order a meeting of creditors, and/or of the stockholders or class of stockholders of this Corporation, as the case may be, to be summoned in such manner as the said court directs. If a majority in number representing three-fourths in value of the creditors or class of creditors, and/or of the stockholders or class of stockholders of this Corporation, as the case may be, agree to any compromise or arrangement and to any reorganization of this Corporation as consequence of such compromise or arrangement, the said compromise or arrangement and the said reorganization shall, if sanctioned by the court to which the said application has been made, be binding on all the creditors or class of creditors, and/or on all the stockholders or class of stockholders, of this Corporation, as the case may be, and also on this Corporation.

**THIRTEENTH:** The Corporation reserves the right to amend, alter, change or repeal any provisions contained in this Restated Certificate of Incorporation in the manner now or hereafter prescribed by statute, and all rights conferred upon stockholders are granted subject to this reservation.

**FOURTEENTH:** (a) Notwithstanding any other provision of this Restated Certificate of Incorporation to the contrary, outstanding shares of stock of the Corporation shall always be subject to redemption by the Corporation, by action of the Board of Directors, if in the judgment of the Board of Directors such action should be taken, pursuant to Section 151(b) of the GCL or any other applicable provision of law, to the extent necessary to prevent the loss or secure the reinstatement of any license or franchise from any governmental agency held by the Corporation or any of its subsidiaries to conduct any portion of the business of the Corporation or any of its subsidiaries, which license or franchise is conditioned upon some or all of the holders of the Corporation's stock possessing prescribed qualifications.

(b) The terms and conditions of such redemption shall be as follows:

(i) the redemption price of the shares to be redeemed pursuant to this Article FOURTEENTH shall be equal to the lesser of (i) the Fair Market Value (as defined below) or (ii) if such stock was purchased by a Disqualified Holder (as defined below) within one year of the Redemption Date (as defined below), such Disqualified Holder's purchase price for such shares;

(ii) the redemption price of such shares may be paid in cash, Redemption Securities (as defined below) or any combination thereof;

(iii) if less than all the shares held by Disqualified Holders are to be redeemed, the shares to be redeemed shall be selected in such manner as shall be determined by the Board of Directors, which may include selection first of the most recently purchased shares thereof, selection by lot or selection in any other manner determined by the Board of Directors;

(iv) at least 30 days' written notice of the Redemption Date shall be given to the record holders of the shares selected to be redeemed (unless waived in writing by any such holder), provided that the Redemption Date may be the date on which written notice shall be given to record holders if the cash or Redemption Securities necessary to effect the redemption shall have been deposited in trust for the benefit of such record holders and subject to immediate withdrawal by them upon surrender of the stock certificates for their shares to be redeemed;

(v) from and after the Redemption Date, any and all rights of whatever nature, which may be held by the owners of shares selected for redemption (including without limitation any rights to vote or participate in dividends declared on stock of the same class or series as such shares), shall cease and terminate and they shall thenceforth be entitled only to receive the cash or Redemption Securities payable upon redemption; and

(vi) such other terms and conditions as the Board of Directors shall determine.

(c) For purposes of this Article FOURTEENTH, the following terms shall have the following respective meanings:

(i) "Disqualified Holder" shall mean any holder of shares of stock of the Corporation whose holding of such stock, either individually or when taken together with the holding of shares of stock of the Corporation by any other holders, may result, in the judgment of the Board of Directors, in the loss of, or the failure to secure the reinstatement of, any license or franchise from any governmental agency held by the Corporation or any of its subsidiaries to conduct any portion of the business of the Corporation or any of its subsidiaries.

(ii) "Fair Market Value" of a share of the Corporation's stock of any class or series shall mean the average Closing Price for such a share for each of the 45 most recent days on which shares of stock of such class or series shall have been traded preceding the day on which notice of redemption shall be given pursuant to subparagraph (b)(iv) of this Article FOURTEENTH; *provided, however*, that if shares of stock of such class or series are not traded on any securities exchange or in the over-the-counter market, "Fair Market Value" shall be determined by the Board of Directors in good faith.

(iii) "Closing Price" on any day means the reported closing sales price or, in case no such sale takes place, the average of the reported closing bid and asked prices on the principal United States securities exchange registered under the Securities Exchange Act of 1934, as amended, on which such stock is listed, or if such stock is not listed on any such exchange, the highest closing sales price or bid quotation for such stock on the Nasdaq National Market or any system then in use, or if no such prices or quotations are available, the fair market value on the day in question as determined by the Board of Directors in good faith.

(iv) "Redemption Date" shall mean the date fixed by the Board of Directors for the redemption of any shares of stock of the Corporation pursuant to this Article FOURTEENTH.

(v) "Redemption Securities" shall mean any debt or equity securities of the Corporation, any of its subsidiaries or any other corporation, or any combination thereof, having such terms and conditions as shall be approved by the Board of Directors and which, together with any cash to be paid as part of the redemption price, in the opinion of any nationally recognized investment banking firm selected by the Board of Directors (which may be a firm which provides other investment banking, brokerage or other services to the Corporation), has a value, at the time notice of redemption is given pursuant to subparagraph (b)(iv) of this Article FOURTEENTH, at least equal to the price required to be paid pursuant to subparagraph (b)(i) of this Article FOURTEENTH (assuming, in the case of Redemption Securities to be publicly traded, such Redemption Securities were fully distributed and subject only to normal trading activity).

*State of Delaware*  
*Office of the Secretary of State* PAGE 1

---

I, EDWARD J. FREEL, SECRETARY OF STATE OF THE STATE OF DELAWARE, DO HEREBY CERTIFY THE ATTACHED IS A TRUE AND CORRECT COPY OF THE CERTIFICATE OF AMENDMENT OF "USA MOBILE COMMUNICATIONS HOLDINGS, INC." FILED IN THIS OFFICE ON THE TWENTY-EIGHTH DAY OF DECEMBER, A.D. 1994, AT 11:10 O'CLOCK A.M.



*Edward J. Freel, Secretary of State*

2283439 8100

981090547

AUTHENTICATION: 8962009

DATE: 03-10-98

USA MOBILE COMMUNICATIONS HOLDINGS, INC.

CERTIFICATE OF AMENDMENT  
OF  
RESTATED CERTIFICATE OF INCORPORATION

USA Mobile Communications Holdings, Inc., a corporation organized and existing under the General Corporation Law of the State of Delaware (the "Corporation"),

DOES HEREBY CERTIFY

FIRST: That at a meeting of the Board of Directors of the Corporation, resolutions were duly adopted setting forth proposed amendments of the Restated Certificate of Incorporation of the Corporation, declaring such amendments to be advisable and directing that such amendments be presented to the stockholders of the Corporation for consideration thereof. The resolutions setting forth the proposed amendments are as follows:

RESOLVED, that the Restated Certificate of Incorporation of the Corporation, subject to the approval of the stockholders, be amended by adding a new Article Twelfth which shall be and read as follows:

"TWELFTH:

Notwithstanding any other provision of this Restated Certificate of Incorporation to the contrary, outstanding shares of stock of the Corporation shall always be subject to redemption by the Corporation, by action of the Board, if in the judgment of the Board such action should be taken, pursuant to Section 151(b) of the GCL or any other applicable provision of law, to the extent necessary to prevent the loss or secure the reinstatement of any license or franchise from any governmental agency held by the Corporation or any of its subsidiaries to conduct any portion of the business of the Corporation or any of its subsidiaries, which license or franchise is conditioned upon some or all of the holders of the Corporation's stock possessing prescribed qualifications. The terms and conditions of such redemption shall be as follows:

(a) the redemption price of the shares to be redeemed pursuant to this Article Twelfth shall be equal to the lesser of (i) the Fair Market Value or (ii) if such stock was purchased by a Disqualified Holder within one year of the Redemption Date, such Disqualified Holder's purchase price for such shares;

(b) The redemption price of such shares may be paid in cash, Redemption Securities or any combination thereof;

(c) if less than all the shares held by Disqualified Holders are to be redeemed, the shares to be redeemed shall be selected in such manner as shall be determined by the Board, which may include pro rata redemption, selection first of the most recently purchased shares thereof, selection by lot or selection in any other manner determined by the Board;

(d) at least 30 days' written notice of the Redemption Date shall be given to the record holders of the shares selected to be redeemed (unless waived in writing by any such holder), provided that the Redemption Date may be the date on which written notice shall be given to record holders if the cash or Redemption Securities necessary to effect the redemption shall have been deposited in trust for the benefit of such record holders and subject to immediate withdrawal by them upon surrender of the stock certificates for their shares to be redeemed;

(e) from and after the Redemption Date, any and all rights of whatever nature that may be held by the owners of shares selected for redemption (including without limitation any rights to vote or participate in dividends declared on stock of the same class or series as such shares) shall cease and terminate and such owners thenceforth be entitled only to receive the cash or Redemption Securities payable upon redemption; and

(f) such other terms and conditions as the Board shall determine.



# Pre-Merger Ownership Chart

This chart depicts the ownership of only those MobileMedia subsidiaries that hold FCC licenses.

